

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-213629**DATE:** January 17, 1985

**MATTER OF:** Civilian Employee of the Department of  
The Navy - Suspected Fraudulent Claim for  
Subsistence Expenses

**DIGEST:**

Agency recouped subsistence expenses advanced to an employee, determining that he had fraudulently claimed payment of tips to hotel maids. We find that the investigative report relied upon by the agency does not contain evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. In the absence of such evidence, the employee is entitled to be refunded amounts covering his subsistence expenses. The agency may reduce reimbursement for maid tips if it determines that the claimed amounts are unreasonably high.

An employee of the Norfolk Naval Shipyard, Portsmouth, Virginia, appeals our Claims Group settlement dated December 28, 1982. In that settlement, our Claims Group concurred with the Department of the Navy's determination that the employee fraudulently claimed payment of tips to hotel maids and thereby inflated his claim for subsistence expenses on each day of a 19-day temporary duty assignment. For the reasons stated below, we reverse our Claims Group settlement.

**BACKGROUND**

During the period December 1 to December 19, 1980, 21 employees of the Norfolk Naval Shipyard, including the subject employee, were assigned to perform temporary duty in Philadelphia, Pennsylvania.

The employees stayed at the Hilton Stadium Inn in Philadelphia, and claimed reimbursement for tips paid to hotel maids on each day of the 19-day assignment. The

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subject employee claimed that he paid maid tips of \$5 on the first day, \$2 on each of the next 17 days, and \$10 on the final day, for a total of \$49.

Since each of the 21 employees claimed high amounts for maid tips, the Navy states that it suspected fraud and requested that the Naval Investigative Service (NIS) conduct an investigation of the claims. Based on the investigative reports, discussed in relevant part below, the Navy determined that all of the employees had fraudulently claimed the payment of tips to hotel maids and were liable to repay subsistence expenses for the tainted days. The subject employee was required to repay \$1,405.95, representing the total subsistence expenses he had claimed for the 19-day temporary duty assignment.

By settlements dated December 28, 1982, our Claims Group concurred with the Navy's determination that the employees had fraudulently claimed the payment of maid tips. Ten of the employees appealed the settlements. The employees submitted affidavits prepared by maids who allegedly serviced some of their rooms, stating that other maids and hotel employees had access to the rooms and may have taken tips left by the employees. The employees further contended that, among other procedural errors, the Navy failed to afford them an opportunity to examine and rebut the contents of the NIS reports.

By letter to the Navy, we remanded the employees' appeals and advised the agency to allow the employees an opportunity to examine the relevant investigative materials. At the same time, we informed the employees that they could resubmit their appeals to our Office after reviewing the investigative reports.

The Navy permitted the employees to examine the investigative materials, and then furnished us with an administrative report responding to the employees' arguments. In its report, the Navy challenges the reliability of the affidavits submitted by the employees, noting that the maids' statements were not taken until April 21, 1983, more than 2 years after the employees had completed their temporary duty assignment in Philadelphia. Further, the Navy asserts that the affidavits merely confirm that the maids had not received a majority of tips claimed by the

employees. The agency states that NIS interviewed the hotel maids in January 1981, less than 6 weeks after the employees' temporary duty assignment, and that the evidence collected through these interviews should be accorded greater weight.

The subject employee resubmitted his appeal to our Office. Since the other 9 appeals have not been resubmitted, our decision is limited to the subject claim.

#### DISCUSSION

In order to establish fraud which will support either the denial of a claim or recoupment action in the case of a paid voucher, our Office has observed that:

"\* \* \* the burden of establishing fraud rests upon the party alleging the same and must be proven by evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Circumstantial evidence is competent for this purpose, provided it affords a clear inference of fraud and amounts to more than suspicion or conjecture. However, if, in any case, the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty is required to be drawn." Charles W. Hahn, B-187975, July 28, 1977.

The NIS report concerning the subject employee contains summaries of interviews with a day-shift maid and a night chambermaid who allegedly serviced the employee's room on the hotel's fourth floor and reportedly stated that they received no tips from that room. However, the report indicates that the day-shift maid refused to make a sworn statement that she did not receive tips claimed by the employee. Further, an affidavit prepared by the night chambermaid reveals that, during the period in question, she worked on the hotel's second floor and did not service any rooms on the fourth floor, where the subject employee resided.

In view of the scant and ambiguous evidence presented by the Navy, we are unable to conclude that it has sustained its burden of establishing that the subject employee

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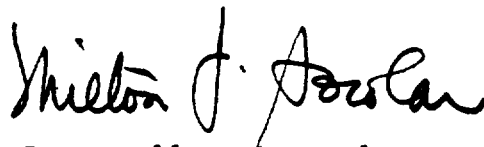
fraudently claimed the payment of maid tips. On this basis, we hold that the employee may be reimbursed for the subsistence expenses he incurred on each day of the 19-day temporary duty assignment.

We note, however, that the employee's claim for maid tips amounting to \$49 during a 19-day period appears to be excessive. Generally, an employee is entitled to reimbursement for only reasonable expenses incurred during a temporary duty assignment, since travelers are required to act prudently in incurring expenses. See Micheline Motter and Linn Huskey, B-197621, B-197622, February 26, 1981. This principle is based on para. 1-1.3a of the Federal Travel Regulations, FPMR 101-7 (September 1981), which provides:

"An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business."

It is the responsibility of the employing agency, in the first instance, to determine whether claimed subsistence expenses are reasonable. See Motter and Huskey, above. Accordingly, the Navy should evaluate the reasonableness of the amounts the subject employee has claimed for maid tips, and make any appropriate adjustments for reimbursement purposes.

The employee's claim for subsistence expenses may be settled in accordance with the foregoing, and he should be refunded amounts which erroneously were collected from him by recoupment.

*for*   
Comptroller General  
of the United States